

In the Matter of License No. 19428 as Master Merchant Mariner's
Document No. Z-81819 and all other Seaman Documents
Issued to: JOSEPH G. ARMSTRONG

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1086

JOSEPH G. ARMSTRONG

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulation 137.11-1.

By order dated 28 May 1958, an Examiner of the United States Coast Guard at Baltimore, Maryland revoked Appellant's seaman documents upon finding him guilty of incompetence.

The specification, which was found proved subsequent to a plea of guilty, alleges that due to his mental condition, Appellant is unable to carry out the responsibilities and duties required of licensed Officers and unlicensed personnel serving on board merchant vessels of the United States.

Appellant was represented by professional counsel during the course of the hearing but not on appeal. In addition to counsel's plea of guilty on behalf of Appellant, proof of the charge and specification is supported by the testimony of a United States Public Health Service psychiatrist who had examined Appellant as well as that of the President of the Baltimore Master, Mates and Pilots Association in which Appellant was a member, and a Certificate of Medical care from the U.S.P.H.S. Hospital in Baltimore, Appellant submitted a petition requesting the Examiner to issue an order accepting the voluntary deposit of Appellant's license to serve as a Master "until such time as he shall be declared mentally and physically fit and competent to perform the duties of a deck officer in the United States Merchant Marine."

Approximately three months prior to the institution of this proceeding, Appellant had voluntarily deposited his documents with the Coast Guard until such time as he was declared fit for duty by the U.S.P.H.S. Appellant had signed an agreement not to accept employment on any merchant vessel of the United States while his documents were in the custody of the Coast Guard. Appellant signed this agreement in February 1958 in lieu of having a hearing at that time. Nevertheless, Appellant breached this agreement by accepting employment as a Night Mate on board a merchant vessel of the United

States. Appellant was then charged with incompetence and the matter was brought to a hearing with the result that Appellant's documents were revoked by the Examiner.

For a licensed officer now 58 years of age, Appellant had a rather extensive prior record of offenses for which hearings were held on four separate occasions. The last one was in 1944 when Appellant was found guilty of having been intoxicated five times while at sea and of having assaulted a seaman with a revolver. At this time, Appellant's license was revoked but the order was modified on appeal.

In this present appeal, Appellant contends that the U.S.P.H.S. psychiatrist's comments concerning Appellant's racial bias are unsubstantiated by the facts; certain testimony by the President of the Baltimore Master, Mates and Pilots Association was hearsay; and the order of revocation is too severe. As part of his appeal for clemency, Appellant has submitted documentary recommendations dated from 1935 to 1949 and a letter from the War Shipping Administration advising Appellant that he had been awarded a decoration. In conclusion, Appellant requests the return of his documents.

It is my opinion that the action taken by the Examiner was the only appropriate one under the circumstances. As stated by the Examiner, there is no provision in the regulations for the issuance by an examiner of such an order as was requested by Appellant - suspension until declared fit for duty. The statute (46 U.S.C. 239) does not contemplate such an indefinite order. Therefore, it is not considered to be a proper type of order to be issued by an examiner. In addition, Appellant had the opportunity of regaining possession of his documents upon being declared fit for duty by the U.S.P.H.S. but Appellant breached the agreement which made this arrangement possible. At this point, there was little choice except to institute formal proceedings against the documents of Appellant.

In view of Appellant's plea of guilty, his attacks on portions of the testimony of the two witnesses are without merit. The testimony of both of these witnesses indicates that Appellant is mentally incompetent and this is frankly admitted by counsel for Appellant. The documents submitted on appeal which are favorable to Appellant's cause are more than offset by his prior record of offenses.

Based on the evidence presented at the hearing, my reasons for upholding the Examiner's order of revocation may be best summarized by quoting from the U.S.P.H.S. Certificate of Medical Care, dated 11 April 1958, which was received in evidence at the hearing and was signed by the Chief of the U.S.P.H.S. Neuropsychiatric Service who also testified at the hearing.

"It is my opinion that this man will not recover fully to render it safe for him to ship out in the foreseeable future. In my opinion, he is suffering with what would be considered a total and permanent disability."

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 28 May 1958, is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 20th day of January 1959.